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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ———

THE BUCKEYE COTTON OIL COMPANY (now merged into THE BUCKEYE CELLULOSE CORPORATION),

Petitioner,

v.

LOCAL 19, WAREHOUSE, PROCESSING AND DISTRIBUTIVE WORKERS UNION, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFFILIATED WITH CONGRESS FOR INDUSTRIAL ORGANIZATIONS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

The petitioner, The Buckeye Cotton Oil Company (merged, since the submission of this case to the Court of Appeals, into The Buckeye Cellulose Corporation), prays that a Writ of Certiorari be issued to review the judgment of the Court of Appeals for the Sixth Circuit entered in the above cause on August 22, 1956.

OPINIONS BELOW

The opinion of the Court of Appeals which is reprinted hereinafter as Appendix B, is reported in ——— F. (2d) ———. The District Court did not render a written

opinion, and there was no report of its order. The order itself, together with the Official Court Reporter's notes of Judge Boyd's oral ruling, appears hereinafter as Appendix C.

JURISDICTION

The judgment of the Court of Appeals was entered on August 22, 1956. On September 19, 1956, the mandate was stayed for thirty days. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

QUESTIONS PRESENTED

1. Whether, in an action brought by a union under Section 301(a) of the Labor Management Relations Act, 1947, a federal district court has jurisdiction to compel arbitration of individual employee claims for accrued back wages pursuant to the terms of a collective bargaining agreement between the union and the employer.

2. Whether, in an action brought by a union under Section 301(a) of the Labor Management Relations Act, 1947, to compel arbitration of individual employee claims for accrued back wages pursuant to the terms of a collective bargaining agreement between the union and the employer, the United States Arbitration Act applies.

3. Whether, in an action brought by a union under Section 301(a) of the Labor Management Relations Act, 1947, a federal district court has jurisdiction to grant an injunction compelling arbitration of grievances "involving or growing out of a labor dispute," despite the provisions of the Norris-LaGuardia Act.

4. Whether, in an action brought by a union under Section 301(a) of the Labor Management Relations Act, 1947, to compel arbitration of individual employee claims for accrued back wages pursuant to the terms of a collective bargaining agreement between the union and the em-

ployer, the law of the state in which the contract was signed and in which the work was performed and in which the federal action was brought, applies.

STATUTES INVOLVED

The pertinent provisions of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. Sections 141-187, of the United States Arbitration Act, 61 Stat. 669, 9 U. S. C. Sections 1-14, as amended, and of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. Sections 101-115, are set forth in Appendix A.

STATEMENT

All the facts of this case appear in the Complaint, with its Exhibits, filed in the District Court (R. 2-a—9-a, 1b-2b).

Petitioner (hereinafter referred to as "the Company") is an Ohio corporation having a manufacturing plant at Memphis, Tennessee. Respondent (hereinafter referred to as "the Union") is a voluntary unincorporated labor union, with its main office in Memphis, Tennessee. It is recognized by the Company as the collective bargaining agent for certain employees at the Memphis, Tennessee, plant.

The Union and the Company entered into an Agreement dated March 5, 1953, covering hours, wages, rates of pay and certain other working conditions for employees at the Memphis, Tennessee, plant (Exhibit "A" to Complaint, R. 8-a, 1b-2b). Article VIII of the Agreement sets up a grievance procedure which provides for four steps (R. 1b-2b). The fourth step, under certain circumstances, provides for arbitration. A dispute arose between the Company and the Union as to whether or not overtime pay was due certain employees for certain work up to September 28, 1954, under the Agreement and a First Amendatory Agreement (Exhibit "B" to Complaint) which expired on that date (R. 3-a). The Union asked that

overtime pay be made to these employees and when the Company refused, the Union started the grievance procedure (R. 5-a). When the fourth stage of the grievance was arrived at the Union asked for arbitration, but the Company refused to comply (R. 5-a). The Union then on October 22, 1954 filed a Complaint in the District Court for the Western Division, Western District of Tennessee, under Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. Section 185, asking the Court (1) to enjoin the Company from violating the Agreement and First Amendatory Agreement by refusing to pay the overtime (2) to order the Company to submit the dispute to arbitration (3) to determine the amount due each employee and enter judgment therefor against the Company (R. 1-a—2-a, 6-a—7-a).

The Company moved in the District Court to dismiss the Complaint in its entirety for lack of jurisdiction of the subject matter and for failure to state a claim upon which relief could be granted (R. 10-a). By the time of the argument on the motion, this Court had decided the case of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437 (1955), and the union accordingly withdrew prayers 1 and 3 of the Complaint, leaving only prayer 2 for decision on the motion to dismiss (R. 13-a, Appendix C, pp. 34-35). The District Court then granted the motion to dismiss on both grounds, that the Court lacked jurisdiction of the subject matter and that the Complaint failed to state a claim upon which relief could be granted (R. 13-a, Appendix C, pp. 34-35).[1] The District Court, relying upon the decision of this Court in *Association of Westinghouse Salaried Employees* v. *West-*

[1] The statement at the beginning of the Court of Appeals' opinion (Appendix B, p. 18), that the appeal arose upon a motion for summary judgment entered in favor of defendant, is incorrect. The District Court granted defendant's motion to dismiss the Complaint, and did not pass upon plaintiff's counter-motion for summary judgment. (R. 10-a, 12-a, 13-a, Appendix C, pp. 34-35).

inghouse Electric Corporation, 348 U. S. 437 (1955), held that Section 301 of the Labor Management Relations Act, 1947, was a procedural statute only, did not grant jurisdiction over a suit by a union for employees' wages, and did not authorize an injunction to compel arbitration of a question concerning back wages. The Court further held that this case was a labor dispute and that the Norris-LaGuardia Act prohibited the issuance of an injunction. Thirdly, the District Court held that the United States Arbitration Act did not apply to this contract of employment, and fourthly, that the applicable law was the state law of Tennessee under which executory agreements to arbitrate are not specifically enforceable (R. 14-a—18-a, Appendix C, pp. 34-39).

On appeal, the United States Court of Appeals for the Sixth Circuit reversed the decision of the District Court, and disagreed with its reasoning on all counts. The Court of Appeals held that the *Westinghouse* case did not control the decision in the instant case, as the *Westinghouse* case was a suit for back wages whereas the present case, according to the Court of Appeals, was a suit for enforcement of an arbitration provision of a contract. The Court held that Section 301 of the Labor Management Relations Act, 1947, was more than a procedural statute and that it conferred jurisdiction on the District Court to issue an injunction compelling arbitration. Furthermore, the Court of Appeals held that this matter fell within the purview of the United States Arbitration Act, and that therefore that Act and not state law controlled. Following this theory, the Court held that Section 4 of the United States Arbitration Act conferred jurisdiction to grant arbitration in this type of proceeding. Finally, the Court of Appeals held that the Norris-Laguardia Act did not apply to this matter and did not prohibit the court from issuing an injunction. Accordingly, it reversed the judgment of the

District Court and remanded the case to that court for hearing in accordance with the appellate opinion[2] (Appendix B, pp. 18-33).

REASONS FOR GRANTING THE WRIT

This case presents important questions of Federal law as to the scope of Section 301 (a) of the Labor Management Relations Act, 1947, and as to the applicability of the United States Arbitration Act and the Norris-LaGuardia Act to actions brought under Section 301 (a) to enforce arbitration provisions in collective bargaining agreements. It further presents the question of whether state law controls the granting of a mandatory injunction to proceed with an arbitration provision, or whether federal law controls (and if so what the federal law should be). On these important questions the present decision by the Court of Appeals for the Sixth Circuit is in conflict with the decisions of Courts of Appeals for other Circuits, and the other Circuits are in conflict among themselves:

Holding that Section 301 of the Labor Management Relations Act, 1947, does not confer jurisdiction to issue an injunction compelling arbitration—the *Second, Fifth* and *Ninth* Circuits.

Haspel v. *Bonnaz, Singer & Hand Embroiderers*, 112 F. Supp 944 (S. D. N. Y. 1953), aff'd without opinion 216 F. (2d) 192 (U. S. C. A. 2nd, 1954);
Ferguson-Steere Motor Company v. *Teamsters Union*, 223 F. (2d) 842 (U. S. C. A. 5th, 1955);
Lincoln Mills of Alabama v. *Textile Workers Union*, 230 F. (2d) 81 (U. S. C. A. 5th, 1/31/56);
ILWU, Local 142 v. *Libby, McNeill & Libby*, 221 F. (2d) 225 (U. S. C. A. 9th, 1955).

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[2] Plainly, the Court of Appeals' ruling is "fundamental to the further conduct of the case." *United States* v. *General Motors Corp.*, 323 U. S. 373, 377 (1945); *Land* v. *Dollar*, 330 U. S. 731, 734 (1947).

Contra:—the *First*, *Second* and *Third* Circuits.

Local 205, United Electrical, Radio and Machine Workers of America (U. E.) v. *General Electric Company*, 233 F. (2d) 85 (U. S. C. A. 1st, 4/25/56);

Wilson Bros. v. *Textile Workers Union*, 132 F. Supp. 163 (S. D. N. Y. 1954), appeal dismissed 224 F. (2d) 176 (U. S. C. A. 2d, 1955);

Independent Petroleum Workers of New Jersey v. *Esso Standard Oil Company*, 235 F. (2d) 401 (U. S. C. A. 3rd, 6/26/56);

And cf: *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437 (1955).

Holding that a collective bargaining agreement is excluded from the application of the United States Arbitration Act as a "contract of employment of . . . any other class of workers engaged in foreign or interstate commerce"—the *Second*,[1] *Third*,[1] *Fourth*, *Fifth* and *Tenth* Circuits.

Signal-Stat Corporation v. *Local 475, United Electrical, Radio & Machine Workers*, 235 F. (2d) 298 (U. S. C. A. 2d, 7/2/56);

See: *Shirley-Herman Co.* v. *International Hod Carriers, etc. Union*, 182 F. (2d) 806, 809 (U. S. C. A. 2d, 1950);

Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Employees v. *Pa. Greyhound Lines, Inc.*, 192 F. (2d) 310 (U. S. C. A. 3rd, 1951);

Pennsylvania Greyhound Lines, Inc. v. *Amalgamated Ass'n of St., Electric Ry., & Motor Coach Employees*, 193 F. (2d) 327 (U. S. C. A. 3rd, 1952);

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[1] While the Second and Third Circuits agree that collective bargaining agreements are "contracts of employment" within the meaning of the Act, they have held, however, that the exclusionary clause of § 1 applies only to agreements covering workers actually engaged in transportation industries. *Tenney Engineering, Inc.* v. *United Electrical, Radio & Machine Workers*, 207 F. (2d) 450 (U. S. C. A. 3d, 1953); *Signal-Stat Corporation* v. *Local 475, United Electrical, Radio & Machine Workers*, 235 F. (2d) 298 (U. S. C. A. 2d, 7/2/56).

United Electrical, Radio & Machine Workers v. *Miller Metal Products, Inc.*, 215 F. (2d) 221 (U. S. C. A. 4th, 1954);

Int'l Union United Furniture Workers of America v. *Colonial Hardwood Flooring Co.*, 168 F. (2d) 33 (U. S. C. A. 4th, 1948);

Lincoln Mills of Alabama v. *Textile Workers Union*, 230 F. (2d) 81 (U. S. C. A. 5th, 1/31/56);

See: *Mercury Oil Refinery Co.* v. *Oil Workers International Union*, 187 F. (2d) 980 (U. S. C. A. 10th, 1951).

Contra:—The *First*, *Seventh* and *Eighth* Circuits.

Local 205, United Electrical, Radio and Machine Workers of America (U. E.) v. *General Electric Company*, 233 F. (2d) 85 (U. S. C. A. 1st, 4/25/56);

See: *Cuneo Press, Inc.* v. *Kokomo Paper Handlers' Union*, 235 F. (2d) 108 (U. S. C. A. 7th, 7/2/56);

See: *United Electrical Workers* v. *Oliver Corp.*, 205 F. (2d) 376, 385 (U. S. C. A. 8th, 1953) (Assumed, without deciding).

Holding that a mere request to compel arbitration does not make the United States Arbitration Act applicable, without other basis for jurisdiction—the *Fifth* and *Sixth* Circuits.

Amalgamated Ass'n v. *Southern Bus Lines*, 189 F. (2d) 219 (U. S. C. A. 5th, 1951);

Mengel Co. v. *Nashville Paper Products & Specialty Workers Union*, 221 F. (2d) 644 (U. S. C. A. 6th, 1955);

Contra, holding that a request to compel arbitration under Section 301 (the only basis for Section 301 jurisdiction —cf. *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437 (1955) makes the United States Arbitration Act applicable—the *First* Circuit.

Local 205, United Electrical, Radio and Machine Workers of America (U. E.) v. *General Electric Company*, 233 F. (2d) 85 (U. S. C. A. 1st, 4/25/56).

Holding that the Norris-LaGuardia Act prohibits the issuance of an injunction in actions under Section 301 of the Labor Management Relations Act, 1947—the *Second* and *Fourth* Circuits.

Alcoa S. S. Co. v. *McMahon*, 81 F. Supp. 541 (S. D. N. Y. 1948), aff'd 173 F. (2d) 567 (U. S. C. A. 2d, 1949), cert. denied 338 U. S. 821 (1949);
Amazon Cotton Mill Co. v. *Textile Workers Union*, 167 F. (2d) 183 (U. S. C. A. 4th, 1948).

Contra:—the *First*, *Third* and *Fifth*[*] Circuits.

Local 205, United Electrical, Radio and Machine Workers of America (U. E.) v. *General Electric Company*, 233 F. (2d) 85 (U. S. C. A. 1st, 4/25/56);
Independent Petroleum Workers of New Jersey v. *Esso Standard Oil Company*, 235 F. (2d) 401, U. S. C. A. 3d, 6/26/56);
Lincoln Mills of Alabama v. *Textile Workers Union*, 230 F. (2d) 81 (U. S. C. A. 5th, 1/31/56).

Holding that state law determines whether an arbitration clause in a collective bargaining agreement will be specifically enforced in an action under Section 301 of the Labor Management Relations Act, 1947—the *Fifth* and *Tenth* Circuits.

Lincoln Mills of Alabama v. *Textile Workers Union*, 230 F. (2d) 81 (U. S. C. A. 5th, 1/31/56);
Mercury Oil Refinery Co. v. *Oil Workers International Union*, 187 F. (2d) 980 (U. S. C. A. 10th, 1951).

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[*] In *Lincoln Mills of Alabama* v. *Textile Workers Union*, 230 F. (2d) 81, 84 (U. S. C. A. 5th, 1/31/56) the court merely stated, without any discussion, that the Norris-LaGuardia Act would not prevent granting the relief there sought.

Contra:—the *First* Circuit.

Local 205, United Electrical, Radio and Machine Workers of America (U. E.) v. *General Electric Company*, 233 F. (2d) 85 (U. S. C. A. 1st, 4/25/56).

And cf:

Bernhardt v. *Polygraphic Co. of America*, 350 U. S. 198 (1/16/56).

The questions involved in the present case are in many respects identical with those involved in three other cases in which Petitions for Certiorari were granted by this Court on October 8, 1956. Those decisions are:

No. 276, *General Electric Company* v. *Local 205, United Electrical, Radio and Machine Workers of America (U. E.)*;
No. 262, *Goodall-Sanford, Inc.* v. *United Textile Workers of America, A. F. L. Local 1803*;
No. 211, *Textile Workers Union of America* v. *Lincoln Mills of Alabama.*

There are only three differences between the situation presented in the present case and that already considered by this Court in acting on *General Electric Company* v. *Local 205, United Electrical, Radio and Machine Workers of America (U. E.)*, supra:

1. In the present case the merits of the matters sought to be arbitrated relate only to simple wage claims already accrued in the past, so as to bring the case even more clearly within the decision by this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437 (1955).

2. In the present case the Court of Appeals found authority to issue an injunction compelling arbitration both in the United States Arbitration Act and in Section 301 itself; whereas the Court of Appeals for the First Cir-

cuit expressly declined to rely upon Section 301 for this purpose.

3. In the present case the state law of Tennessee is that an agreement to arbitrate is not specifically enforceable;* whereas there seems to be some uncertainty in regard to the law of the State of Massachusetts.

CONCLUSION

For any one or more of the reasons above stated, and specifically in view of the action of this Court October 8, 1956 in granting the Petitions for Certiorari in the three cases last mentioned, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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* See Appendix B, pp. 21, 23; Appendix C, pp. 37-38.

APPENDIX A

STATUTES INVOLVED

LABOR MANAGEMENT RELATIONS ACT, 1947, 61 Stat. 156
29 U.S.C. § 185

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of action and proceeding by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principle office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

UNITED STATES ARBITRATION ACT, 43 Stat. 883, re-enacted 61 Stat. 669, 9 U.S.C. §§ 1-14, as amended by Act of September 3, 1954, 68 Stat. 1233.

"Maritime transactions" and "commerce" defined; exceptions to operation of title

SEC. 1. "Maritime transactions," as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce," as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Validity, Irrevocability, and Enforcement of Agreements to Arbitrate

SEC. 2. A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing

to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Failure to Arbitrate Under Agreement; Petition to United States Court Having Jurisdiction for Order to Compel Arbitration; Notice and Service Thereof; Hearing and Determination

SEC. 4. A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of

the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

NORRIS-LAGUARDIA ACT, 47 Stat. 70, 29 U.S.C. §§ 101-115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

* * * * * *

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect——

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no

injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recom-

pense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant, and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

* * * * * * *

SEC. 13. When used in this Act, and for the purposes of this Act——

* * * * * * *

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12652

LOCAL 19, WAREHOUSE, PROCESSING AND DISTRIBUTVE WORKERS UNION, RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, AFFILIATED WITH CONGRESS FOR INDUSTRIAL ORGANIZATIONS,

Appellant,

v.

THE BUCKEYE COTTON OIL COMPANY,

Appellee.

APPEAL from the United States District Court for the Western District of Tennessee, Western Division.

Decided August 22, 1956.

Before SIMONS, Chief Judge, ALLEN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. This appeal arises upon a motion for summary judgment entered in favor of defendant in the trial court.[1] The complaint filed under Section 301 of the Labor Management Relations Act, 1947, 29 U. S. C., Section 185, alleged the existence of a collective bargaining agreement between the parties, providing terms in respect to hours of work, wages and working conditions, and also providing in Article VIII for mutual and voluntary arbitration of grievances. The pertinent part of Article VIII reads as follows:

"A grievance is defined to be any difference between the Employer and any employee, or employees,

[1] The parties will be denominated as in the court below.

covered by this agreement as to any matter involving the interpretation or application of this agreement, or as to any matter directly affecting the employee in respect to hours of work, wages, or working conditions. Should any grievance arise it shall be settled in the following manner:

"FIRST: Between the employee and his shop steward and the foreman or supervisor of the particular department; if not settled, then,

"SECOND: Between the Plant Grievance Committee and the Mill Superintendent or other representative designated by the management. . . . If not settled, then,

"THIRD: The matter shall be taken up between the Grievance Committee, a representative of the Union, and a representative of the Management. . . .

"FOURTH: If no mutual agreement has been reached on a matter involving the interpretation or application of any provision of this Agreement, the matter shall, if other party so requests, be taken up by a Board of Arbitration composed of a representative of the Employer, a representative of the Union, and a third party selected by, and mutually agreeable to, the Union and the Employer. If the Union and the Employer cannot agree on the selection of the third party, they shall request the American Arbitration Association to submit a list, or lists, of arbitrators from which a mutually agreeable third party shall be selected by the parties. It is understood that only grievances involving the interpretation and application of this Agreement may be brought to arbitration except that it is agreed that the question of general wage increases or decreases shall not be subject to any part of the grievance procedure, including arbitration.

"In considering a grievance as provided for above, the Board of Arbitration shall limit itself only to the grievance as stipulated in writing jointly by the Employer and the Union, and shall neither add to nor subtract from the stipulated grievance or the terms of this Agreement. A decision of the majority of the

three arbitrators shall be final and binding on both parties."

The complaint averred that defendant violated the collective bargaining agreement as to working time by employing members of the plaintiff union in excess of 40 hours in any one week and for seven consecutive days without paying the compensation agreed upon, that defendant had refused to pay under the contract, that plaintiff demanded that the grievance be submitted to arbitration, but that defendant had refused to arbitrate. It was alleged that this refusal would cause substantial and irreparable damage and that there was no adequate remedy at law. The complaint prayed for judgment enjoining defendant, its officers and agents, from violating the agreement as to payment for overtime work, for money judgment for wages found due, and "That the Court order the Defendant to submit this dispute to arbitration in accordance with the terms of the collective bargaining Agreements, and that it cooperate with the Plaintiff in the choice of a third arbitrator."

Defendant filed a motion to dismiss the complaint. Subsequently a motion for summary judgment was filed by plaintiff. The court sustained the motion to dismiss the complaint upon the ground that the court lacks jurisdiction of the subject matter and on the further ground that the complaint fails to state a claim upon which relief can be granted.

In its oral opinion the court stated in effect that the decision of the Supreme Court of the United States in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437, required the dismissal of the complaint. That case held that Section 301 of the Labor Management Relations Act, 29 U. S. C., Section 185, withholds from the federal district court jurisdiction over suits by a labor union for employees' unpaid wages. The District Court in its oral opinion herein stated

that "the *Westinghouse* case settles a number of the questions in this case to considerable extent, if not this whole lawsuit." The court declared that since the *Westinghouse* case denied enforcement of wage demands in an action based on Section 301, enforcement of a contract to arbitrate with regard to alleged unpaid overtime wages based on Section 301 must also be denied. The District Court also indicated that state law governs, and declared that under Tennessee law executory contracts to arbitrate are not enforceable. Cf. *Cole Manufacturing Company* v. *Collier*, 91 Tenn. 525; *Key* v. *Norrod*, 124 Tenn. 146. Finally, the court held that this is a labor dispute in which injunctive relief is prohibited by the Norris La-Guardia Act, 29 U. S. C., Section 101, et seq.

At the hearing on the motions counsel for plaintiff stated that the only maintainable portion of the complaint is "the action seeking a mandatory injunction to compel defendant to arbitrate." This was the question considered and decided by the District Court and also is the question presented here.

We think the problems involved are not so easily solved as indicated below.

As to the application of the *Westinghouse* case, while the complaint herein originally involved payment of wages, the arbitration is sought under a collective bargaining contract in which provisions establishing the arbitration method of negotiation and settlement constitute an important feature, and are made applicable to many issues other than those of wages or hours. A grievance as defined above thus covers problems not involved in the *Westinghouse* decision. There the controversy related only to the payment of back wages. The enforcement of an arbitration agreement was not sought and the question of arbitration was not raised. The right set up was individual to the employee. This distinction was pointed out by the First

Circuit in *Local 205, United Electrical, Radio and Machine Workers of America* v. *General Electric Company*, 233 Fed. (2d) 85 (C. A. 1). The court there stated:

> "... the effect of the *Westinghouse* holding, reflected in all the opinions of the majority justices, was to eliminate from § 301 jurisdiction a complaint by a union that involves no more than a cause of action which is 'peculiar in the individual benefit' or 'the uniquely personal right of an employee' or which 'arises from the individual contract between the employer and the employee.' 348 U. S. at 460, 461, 464. That holding was not aimed at any cause of action or remedy that appropriately pertains to the union as an entity, particularly one which an individual employee may have no equal power to enforce. The promise of the employer to arbitrate, which frequently is linked in the contract or in negotiations with a union no-strike pledge, seems to us to be at the forefront of the contract terms for whose breach only the union can effectively seek redress...."

The complaint here seeks relief broader than and distinct from money judgment. This is an action to compel the use of a negotiating device voluntarily agreed upon between management and labor and extensively used. In an exhaustive article, "The Enforcement of Grievance Arbitration Provisions," by William P. Murphy, 23 Tenn. Law Review 259, it is estimated that similar arbitration provisions exist in some 90% of the labor bargaining contracts. The enforcement of this agreement means that, if in the future a controversy arises over conditions of work or the application or interpretation of the agreement, either party may secure a settlement by arbitration rather than by work stoppage or lockout.

Defendant urges that the prayer for enforcement of the arbitration provision is in effect identical with a prayer for money judgment. This contention cannot be sustained. It

is in fact conceivable that if the arbitration is instituted in accordance with the bargaining agreement a majority of the members of the Board of Arbitration might vote in favor of defendant's contentions and deny those of the union. What plaintiff seeks here, although it hopes that it will secure an award in its favor, is that this bargaining feature be used. The court in its order dismissing the complaint finds that plaintiff relies upon this one prayer of the complaint.

Defendant also contends that the bargaining contract provides for voluntary agreement and that if arbitration is ordered by this court it will not be voluntary. The bargaining agreement was entered into voluntarily and, like any other contract, the contract for arbitration falls within the purview of Section 301 and is enforceable thereunder.

We conclude that the *Westinghouse* case is not controlling.

Assuming, but not deciding, that if Tennessee law applies, the arbitration contract being executory is not enforceable, Cf. "The Enforcement of Grievance Arbitration Provisions" by William P. Murphy, *supra*, since the instant case arises under Section 301, 29 U. S. C., Section 185, and also is governed by the Arbitration Act, 9 U. S. C., Section 1 et seq., and diversity of citizenship does not exist, we think the state law does not necessarily apply. The decisions in *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U. S. 198, strongly relied on by defendant, and *Guaranty Trust Company* v. *York*, 326 U. S. 99, upon which the *Bernhardt* case is based, are each squarely grounded upon the fact that a diversity case is presented. Under Section 301, on the contrary, and under 9 U. S. C., Section 1 et seq., jurisdiction is derived from Article III of the United States Constitution, which gives the courts of the United States jurisdiction in cases "in Law and Equity, arising under . . . the Laws of the United States.

. . ." Cf. *Local* 205, *United Electrical, Radio and Machine Workers of America* v. *General Electric Company*, *supra*, p. 95.

The Supreme Court has pointed out in two recent cases that *Guaranty Trust Company* v. *York*, *supra*, requires the application of state law only when the controversy in question is concerned "solely with State-created rights." The court said in *Holmberg* v. *Armbrecht*, 327 U. S. 392, "For purposes of diversity suits a federal court is, in effect, 'only another court of the State.' *Guaranty Trust Co.* v. *York*, *supra*, at 108. The considerations that urge adjudication by the same law in all courts within a State when enforcing a right created by that State are hardly relevant for determining the rules which bar enforcement of an equitable right created not by a State legislature but by Congress." To the same effect see the holding of the Supreme Court in *Levinson* v. *Deupree*, 345 U. S. 648. The Supreme Court pointed out, page 651, that the jurisdiction of the United States District Court in that case "did not derive from diversity of citizenship; indeed there was no such diversity. *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, is irrelevant. The court in this case was not 'in effect, only another court of the State,' *Guaranty Trust Co.* v. *York*, 326 U. S. 99, 108."

In *Bernhardt* v. *Polygraphic Company, Inc.*, *supra*, a suit instituted in the state court of Vermont was removed to the federal district court on ground of diversity of citizenship. The action was based upon an employment contract and sought damage for petitioner's discharge. The *Polygraphic Company* had hired petitioner, who resided in New York at the time, under a contract including a provision that the parties would submit any dispute to arbitration under New York law. Later petitioner, being a resident of Vermont, brought an action for damages in the state court. After removal to the federal court respondent

moved for a stay in order that the controversy might be arbitrated in New York. The District Court, however, ruled that the arbitration provision of the contract was governed by Vermont law. The Supreme Court held that, since the right to arbitration owed its existence to one of the states and not to the United States, the local law governed. Mr. Justice Douglas, speaking for the court, called attention to the declaration of *Guaranty Trust Company v. York, supra,* that the federal court enforcing a state-created right in a diversity case is "only another court of the State." The court held that the remedy by arbitration substantially affects the cause of action created by the state and that, since this was a state-created right, the federal court could not allow arbitration where the state court would disallow it. The *Polygraphic* case has no bearing here.

Defendant however, urges that the Supreme Court in the *Westinghouse* case, *supra,* held in effect that the state law governs and argues that the rights relied on here were created by state law. Each contention, we think, is untenable.

While the Supreme Court in the *Westinghouse* case construed Section 301, it construed it solely with reference to a suit for payment of wages. It did not declare the meaning of the term "suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . ." (§ 301.) In absence of such a construction by the Supreme Court we adhere to the decision by this court in *Milk & Ice Cream Drivers and Dairy Employees Union Local No. 98 v. Gillespie Milk Products Corporation,* 203 Fed. (2d) 650 (C. A. 6). We there held, quoting Section 301, that the unqualified use of the word "suits" in the Labor Management Relations Act authorized an injunction for the full enforcement of the substantive rights therein created. We applied this

section to an arbitration controversy and held that an injunction should issue to prohibit the employer from refusing to give effect to the decision and award of a duly constituted arbitrator. We pointed out that the same contention with reference to Section 301 had already been decided against the appellee in *American Federation of Labor* v. *Western Union Telegraph Company*, 179 Fed. (2d) 535 (C. A. 6), and held that the complaint stated a specific cause of action within the jurisdiction of the District Court. In accord are *Textile Workers Union of America* v. *Aleo Manufacturing Co.*, 94 Fed. Supp. 626; *Mountain States Division* No. 17 v. *Mountain States Telephone and Telegraph Co.*, 81 Fed. Supp. 397; *Commercial Telegraphers Union, A. F. L.*, v. *Western Union Telegraph Co., Inc.*, 53 Fed. Supp. 90.

Also this case falls within the purview of the United States Arbitration Act, 9 U. S. C., 81, et seq. In seeking to secure the arbitration agreed upon plaintiff here has rights and remedies created by the Federal Act and not by any state. Hence state law does not control.

This court has already declared that the United States Arbitration Act applies to a collective bargaining contract. *Hoover Motor Express Company, Inc.*, v. *Teamsters, Chauffeurs, Helpers and Taxicab Drivers, Local Union No. 327*, 217 Fed. (2d) 49 (C. A. 6). It was there held that 9 U. S. C., Section 1, does not exclude the collective bargaining contract from the operation of the Act, which creates federal rights in arbitration and supplies the procedural remedy.

Defendant's answer to the *Hoover* decision is its renewed contention that under 9 U. S. C., Section 1, the bargaining contract here involved is a "contract of employment" and therefore excepted from the operation of the Act.

We adhere to our holding in the *Hoover Motor Express Company, Inc.*, v. *Teamsters' Local Union No. 327*, *supra*,

that the bargaining contract is not excluded. The former decision of this court in *Gatliff Coal Company* v. *Cox*, 142 Fed. (2d) 876 (C. A. 6), does not require a reversal of the *Hoover* case. Upon reconsideration of this question we again decide that the *Gatliff Coal Company* case has no bearing upon the question whether the collective bargaining contract herein is "a contract of employment." The *Gatliff* case involved an individual contract for wages and clearly falls within the exception of 9 U. S. C., Section 1. It did not cover collective bargaining contracts. The *Gatliff* case, rightly decided on its facts, supports the doctrine that an individual hiring for wages is a contract of employment excluded by Section 1 of the Arbitration Act. The agreement to establish an arbitration system included in the instant collective bargaining contract does not fall within the exception. *Hoover Motor Express Company, Inc., v. Teamsters' Local Union No. 327, supra; J. I. Case Company* v. *National Labor Relations Board*, 321 U. S. 332; *Lewittes & Sons* v. *United Furniture Workers of America*, 95 Fed. Supp. 851, 855; *United Office & Professional Workers of America* v. *Monumental Life Insurance Co.*, 88 Fed. Supp. 602, 606. *Local 205, United Electrical, Radio and Machine Workers of America* v. *General Electric Company, supra*, pp. 97-100.

The Norris-LaGuardia Act prohibits the use of temporary or permanent injunctions in any case involving or growing out of a "labor dispute," which is defined as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." [29 U. S. C., Section 113 (c).]

It is claimed that this broad provision covers the agreement for arbitration involved and hence prohibits the use of injunction herein.

The Norris-LaGuardia Act does not include arbitration as one of the transactions between employer and labor in which an injunction is prohibited. No act connected with or growing out of a system of labor arbitration is listed in 29 U. S. C., Section 104, with its enumeration of specific acts not subject to restraining orders or injunctions. In fact the statute, 29 U. S. C., Section 108, includes a provision clearly evidencing approval of the use of arbitration:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Moreover, the Norris-LaGuardia Act does not eliminate all injunctive relief with reference to labor disputes. *Virginian Railway Company* v. *System Federation*, 300 U. S. 515; *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232, in which the Norris-LaGuardia Act was specifically ruled not to apply; *Syres* v. *Oil Workers International Union*, 350 U. S. 892.

In view of the above decisions we consider that we are free to follow the specific holding of this court in an arbitration case, *Milk and Ice Cream Drivers and Dairy Employees Union, Local 98*, v. *Gillespie Milk Products Corporation, supra*. It was there urged that the Norris-LaGuardia Act prohibited a United States district court from enjoining violation of a labor contract. But the court held that the use of the injunctive process was authorized for full enforcement of the rights created by Section 301,

and also considered that in the previous decision of this court, *American Federation of Labor* v. *Western Union Telegraph Company, supra*, by necessary implication the holding included a decision that the Norris-LaGuardia Act did not forbid the granting of injunctive relief.

An excellent review of the pertinent adjudications is found in *United Electrical Workers* v. *General Electric Company, supra*. The First Circuit, speaking through Chief Judge Magruder, points out that Section 107 of the Norris-LaGuardia Act was designed to eliminate the usual "labor injunction," that is, an order which prohibits or restricts "unilateral coercive conduct of either party to a labor dispute." This conclusion is strongly supported by the text of 29 U. S. C., Section 107, which provides that under certain conditions defined therein, after hearing in open court a federal court may issue a temporary or permanent injunction. The court is required to make findings of fact to the effect that unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, that substantial and irreparable injury to complainant's property will follow, that public officers charged with the duty of protecting complainant's property are unable or unwilling to furnish adequate protection, and other findings which emphasize the fact that transactions resulting from threatened or actual violence and injury are those covered by this section. As pointed out by the First Circuit, an order to compel arbitration of the breach of a prior agreement to submit disputes to arbitration appears to be of an entirely different character. Recognizing the confusion in the cases as to the applicability of the Norris-LaGuardia Act, the First Circuit held that the statute does not prohibit the granting of the relief sought, and determined that in a case arising under Secion 301 the remedies to be applied are those established in the United States Arbitration

Act, 9 U. S. C., Sections 2, 3 and 4. Simultaneously with the announcement of *Local* 205, *United Electrical Workers of America* v. *General Electric Company, supra*, the First Circuit announced a decision in *Newspaper Guild of Boston* v. *Boston Herald-Traveler Corporation*, 233 Fed. (2d) 102 (C. A. 1), holding that the federal district court has jurisdiction under Section 301 of the Labor Management Relations Act of a suit by a union to compel an employer to arbitrate a dispute in accordance with terms of a collective bargaining contract. On the same day in *Goodall-Sanford, Inc.*, v. *United Textile Workers of America, A. F. L., Local* 1802, 233 Fed. (2d) 104 (C. A. 1), the First Circuit affirmed a judgment of the District Court (131 Fed. Supp. 767) granting a motion for summary judgment on the union's prayer for specific performance of an arbitration provision.

Moreover, in *Independent Petroleum Workers of New Jersey* v. *Esso Standard Oil Company*, the Third Circuit on June 26, 1956, held that a federal district court has jurisdiction under Section 301 of the Labor Management Relations Act, 29 U. S. C., 185, to decree specific performance of a provision in a collective bargaining agreement between a union and an employer, which requires them, when a new job classification is established, to negotiate on the salary rate for such classification. The district court had dismissed Count 1 of the complaint on the ground that the refusal to negotiate constituted an unfair labor practice within the exclusive jurisdiction of the National Labor Relations Board.

Judge Kalodner, speaking for the court, pointed out that the Supreme Court of the United States had held in the *Westinghouse* case that a "breach of contract is not an 'unfair labor practice'" and also that the National Labor Relations Board in repeated rulings had decided that it had no jurisdiction over breach of contract. The Third

Circuit held that the Norris-LaGuardia Act did not apply and concluded that in Section 301 Congress had provided that the federal courts should have jurisdiction with reference to such breaches of contract. The order of the district court was reversed.

There is conflict in the adjudication of both the district courts and circuit courts upon all points covered in this opinion. In view of the full treatment which these questions have received in the cases cited herein we deem it unnecessary to discuss these adjudications exhaustively.[2] Generally in accord with our conclusion as to the applicability of the Norris-LaGuardia Act see *Textile Workers Union* v. *Alco Manufacturing Company, supra; Mountain States Division No.* 17 v. *Mountain States Telephone and Telegraph Company, supra; Commercial Telegraphers Union A. F. L.* v. *Western Union Telegraph Company, Inc., supra.* (This case decided that injunctive relief could be granted in the labor controversy presented, but refused the preliminary injunction prayed for because of the public

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[2] Contra to our conclusion upon the applicability of the Norris-LaGuardia Act see *Alcoa S.S. Company, Inc.*, v. *McMahon*, 173 Fed. (2d) 567 (C. A. 2); *Steelworkers* v. *Galland-Henning Manufacturing Co.*, announced March 12, 1956, ... Fed. Supp. .... Contra to our conclusion that the collective bargaining contract is not a contract of employment excluded by the United States Arbitration Act, Section 1, see *International Union United Furniture Workers of America* v. *Colonial Hardwood Flooring Co., Inc.*, 168 Fed. (2d) 33 (C. A. 4). Contra to our conclusion that specific performance of an arbitration contract may be ordered by a federal court, see *Mercury Oil Refining Co.* v. *Oil Workers International Union*, 187 Fed. (2d) 960 (C. A. 10).

Certain decisions relied on by defendant fall into categories entirely different from the instant case and are not controlling here. For example, *W. L. Mead, Inc.*, v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 217 Fed. (2d) 6 (C. A. 1), arose out of an application for a temporary injunction forbidding a union from continuing a strike and peaceful picketing of the employer's premises. *International Longshoremen's and Warehousemen's Union* v. *Libby, McNeill & Libby*, 221 Fed. (2d) 225 (C. A. 9), arose out of an action for declaratory judgment that an employee of the defendant had been wrongfully discharged. Recovery of the amount claimed to be due was prayed for. The Ninth Circuit held that the case fell squarely within the *Westinghouse* case, *supra*. *Amazon Cotton Mill Co.* v. *Textile Workers Union of America*, 167 Fed. (2d) 183 (C. A. 4), held that the federal courts had no jurisdiction to issue an injunction to restrain an ordinary unfair labor practice. The Arbitration Act was not involved in these cases.

interest involved.) *Wilson Bros.* v. *Textile Workers Union*, 132 Fed. Supp. 163, appeal dismissed 224 Fed. (2d) 176 (C. A. 2).

Defendant also contends that the complaint praying for specific enforcement of the arbitration clause in a collective bargaining agreement does not state a claim upon which relief can be granted.

However, the specific remedy sought in the instant case is expressly authorized in the United States Arbitration Act, 9 U. S. C., Section 4, which reads as follows:

> "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement."

As stated in *Bernhardt* v. *Polygraphic Company of America, Inc., supra*, 201, the "agreement in writing" for arbitration referred to in 9 U. S. C., Section 3 (the section providing for a stay of the trial until arbitration) is the kind of agreement defined in Sections 1 and 2. By analogy we conclude that a "written agreement for arbitration" covered by Section 4 is also the agreement defined in Sections 1 and 2. *Local 205, United Electrical, Radio and Machine Workers of America* v. *General Electric Company, supra*, 97. In the *Bernhardt* case the court points out that there is no showing that the contract there involved evidences "a transaction involving commerce." Here the complaint, the allegations of which for the purpose of ruling upon motion to dismiss are taken as true, sets up that defendant is engaged in an industry affecting commerce within the purview of the Labor Management Rela-

tions Act. This collective bargaining agreement between a local union, CIO, and the defendant therefore is part of a contract evidencing a transaction involving commerce.

It follows that Section 4 makes available to this plaintiff the right of specific enforcement of the arbitration provision. Section 4 is applicable whether or not the steps required by the collective bargaining contract for the institution of the arbitration have already been taken. The statute specifically directs that the arbitration proceed in the manner provided for in the agreement for arbitration. This means under the facts of the instant case that defendant shall proceed to the selection of an arbitrator, to the statement of the grievance under Article VIII, and shall take other necessary steps in the arbitration in compliance with the bargaining contract.

The judgment of the District Court is reversed and the case is remanded for hearing in accordance with this opinion.

APPENDIX C

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF TENNESSEE

Civil Action 2507

LOCAL 19, WAREHOUSE PROCESSING AND DISTRIBUTIVE WORKERS UNION, RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, affiliated with CONGRESS FOR INDUSTRIAL ORGANIZATION,

Plaintiff,

v.

THE BUCKEYE COTTON OIL COMPANY,

Defendant.

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* * * * * * *

ORDER

(Entered June 21, 1955)

This cause came on this day to be heard on the complaint filed herein, defendant's motion to dismiss said complaint, plaintiff's motion for a summary judgment and the statement of counsel for the plaintiff that the only maintainable portion of the complaint is the action seeking a mandatory injunction to compel defendant to arbitrate; and

The Court, after hearing the argument of counsel for the respective parties, is of the opinion that defendant's motion to dismiss is well taken in all respects and should be granted because the Court lacks jurisdiction of the sub-

ject matter and on the further ground that the complaint fails to state a claim upon which relief can be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the complaint be, and the same is hereby dismissed at plaintiff's cost, for want of jurisdiction of the subject matter and for failure of the complaint to state a claim upon which relief can be granted.

.....
Judge

NOTES OF OFFICIAL COURT REPORTER

(Filed July 26, 1955)

In this cause, on June 15, 1955, after arguments of counsel on Motion of Defendant, the Court announced the following ruling, to-wit:

THE COURT: Gentlemen, the Court has had the benefit of your points and authorities, and I believe is familiar with the questions raised, so I think I shall give you the Court's views about it briefly at this time. Your oral presentations today, I should say, have helped to clarify the questions to considerable extent, and it really isn't too involved, after all.

In the early stages of this case Mr. Sabella stated he would not insist on enforcing a money judgment for the overtime compensation sued for, but was interested only in having enforced that part of the contract as amended which deals with arbitration of the plaintiff's grievance, with particular respect to overtime compensation, and this is his attitude today. So we are interested in only the arbitration feature of this litigation.

Now, this long awaited Westinghouse Supreme Court opinion does help to considerable extent to clarify our prob-

law. Under this opinion it seems settled a labor union cannot bring suit in the District Court on behalf of employees for accrued wages under Section 301 of the Labor-Management Relations Act. The Supreme Court, in the Westinghouse case, interpreting this Section 301, ruled it, as I understand, does not grant a Federal District Court jurisdiction over suits by a labor union for employees' unpaid wages. The purpose of Section 301, I believe the Court said, was to make unions suable as corporations and that Section 301 is a mere procedural provision. The Supreme Court said Congress did not intend to burden the District Courts with suits of this type.

Now, since a District Court does not have jurisdiction in a suit for unpaid wages, it is a little difficult really for this Court to understand how it could in sound reason order, under the agreement before the Court, an arbitration between this union and this respondent to determine a question concerning wages, and I don't believe this Court can. While the arbitration question was not in the Westinghouse case, by analogy it at least would seem that if the Court does not have jurisdiction to adjudicate directly with respect to accrued wages, it would have no right to order the respondents to arbitrate concerning wages, or the fixing of overtime compensation, as the Court is asked to do in this case.

Now, both sides seem to get some comfort from the Westinghouse case, and it may be over-simplification, but the Court really feels that the Westinghouse case settles a number of the questions in this case to considerable extent, if not this whole lawsuit.

In its last analysis, we are dealing here with enforcement of wage demands, referred to in the complaint as, I believe, overtime compensation. But we should not overlook, and the Court agrees with the respondent that this is a labor dispute in which injunctive relief is sought by

the plaintiffs without anything or any language in Section 301 or any other provision of the Labor-Management Act to suggest that the Congress intended to repeal the terms of the Norris-La Guardia Act against injunctions in labor disputes, and this to the Court seems to be a labor dispute. Respondents have cited a number of cases today which on this point seem to have application. The Norris-La Guardia Act, as the Court views it, is still in effect, insofar as this type of case is concerned. Involved here are claims for employees for unpaid wages, which they have common law rights to enforce in the State courts. Of course, injunctions under the Labor-Management Act are allowed in certain situations, particularly those involving unfair labor practices, among others, where injunction is sought by officials of the Government, and the Court has had experience with this type of injunction, as Mr. Sabella, who was at the time with the Government, probably recalls.

The Court is satisfied, too, gentlemen, as I believe I have already said, that Section 301 had for its purpose the making of procedural changes only, and was not intended to enlarge or alter the jurisdiction of the District Courts except in regards to the amount in controversy and diversity of citizenship. It does not in the Court's opinion authorize injunctions as applied for in this case to force respondent to arbitrate with regard to unpaid overtime wages allegedly earned by individual employees. Respondent has cited the controlling cases today, but as to this, we need not go behind the Supreme Court's latest announcements in the Westinghouse case.

Now, I might say the Supreme Court's majority opinion in the Westinghouse case—, and I have reference to the one prepared by Mr. Justice Frankfurter,—seems to say that the State law governs. And under Tennessee law, as defense counsel points out, and as I think we are bound to agree—, I believe I heard plaintiff's counsel in

his closing remarks a few minutes ago in effect say he agreed,—that executory contracts to arbitrate are not enforceable since agreements, the objects of which are to oust jurisdiction of the courts, are contrary to public policy. Further as was pointed out in argument today, in order for the proposed agreement to arbitrate to be valid and binding in Tennessee, the Tennessee statute must be complied with, which under Judge Greene's opinion in Kay against Norred, has not been done in this case.

Now, the Court agrees, I might say here, with defense counsel that the Federal Arbitration Act does not apply to this contract of employment, and in the Court's opinion that seems to be the type of contract here involved, rather than so-called trade agreement between the employer and workers engaged in commerce. Cases from our own Circuit Court of Appeals, among others cited today, are authority for this proposition.

The plaintiff, in the Court's opinion, is not entitled to the relief it seeks, either under the Tennessee law or under the United States Arbitration Act. The authorities cited today amply sustain these views, the Court feels sure. Incidentally, some of the courts hold the United States Arbitration Act is only procedural.

The Court sustains the first two grounds of defendant's motion to dismiss the complaint, insofar as it seeks injunctive relief, because the Court lacks jurisdiction over the subject matter, and because the complaint fails to state a claim upon which relief can be granted. And I might say further the third ground of the defense motion is also sustained, and the complaint in this case is dismissed.

Gentlemen, the Court won't write anything to add to the already confused state of the law. With these rough, general remarks hitting the high spots, you will get the rationale of the Court's thinking. So these are the Court's views, gentlemen.

If this is something novel, as plaintiff's counsel states in his memorandum, I take it there will be an appeal, and you in the not too distant future will get the final word from the higher courts.

All right, gentlemen, get up an order on this, and pass it in to the Court.

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